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09/904,154	07/12/2001	Adrianus Josephes van den Nieuwelaar	V0028/260265	2477

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EXAMINER

PARSLEY, DAVID J

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 06/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/904,154

Applicant(s)

VAN DEN NIEUWELAAR ET AL.

Examiner

David J Parsley

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2-4, 6, 8-34 and 63-74 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9, 11-13, 64, 66 and 69-74 is/are allowed.
- 6) ☒ Claim(s) 2-4, 6, 8, 10, 14-34, 63, 65, 67 and 68 is/are rejected.
- 7) ☒ Claim(s) 23-27 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **Detailed Action**

### ***Amendment***

1. This office action is in response to applicant's amendment dated 2-18-04 and this action is non-final. Further, it is noted that the allowability of claims 6, 10, 16-22, 28-34, 65 and 67-68 has been withdrawn.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 10 recites the limitation "the opening" in line 3. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 3643

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 65 and 68 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 3,967,343 to Westervelt et al.

Referring to claims 65 and 68, Westervelt et al. discloses a device for cutting into at least one blood vessel in the neck of a slaughter animal comprising, a head carrier – at 1-4, for carrying the slaughter animal by its head – see figure 3, a neck positioning device – at 5-6, for positioning the neck of the slaughter animal, wherein the neck positioning device engages the neck in the area which extends from the underside of the head – proximate 6, of the slaughter animal to the second cervical vertebra – proximate 5,7, and a shoulder support – at 1-3, and a blood vessel opening device (not shown), for opening at least one blood vessel, wherein the blood vessel opening device comprises at least one cutting device adapted to move along a cutting path through the neck from one side of the neck to the other side of the neck, wherein the at least one blood vessel to be opened is located along the cutting path of the cutting device – see for example figures 1-5 and columns 1-2 where the cutting device is inherent.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-4, 6, 8, 16-19, 28, 63 and 67, are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,571,844 to Stiles in view of U.S. Patent No. 2,512,089 to Cervin.

Referring to claims 6, 16 and 67, Stiles discloses a method/apparatus for mechanically opening at least one blood vessel in a slaughter animal in particular fowl comprising, hanging the slaughter animal by its head by positioning the neck of the slaughter animal – see at 32 or 62 and column 2 lines 60-73, wherein the neck comprises a longitudinal axis and opening the at least one blood vessel by moving at least one cutting device along a cutting path and the at least one blood vessel to be opened being located in the path of the cutting device – see for example column 1 lines 52-64, wherein the body of the slaughter animal is repositioned from a position below the neck to a position above the neck either before or after opening of the at least one blood vessel in the neck – see for example figures 1-4 and column 1 lines 52-64, column 2 lines 60-72 and column 3 lines 40-72. Stiles further discloses a leg positioning device – at 30 or 62, for positioning at least one leg of the slaughter animal in a leg support which interacts with the leg positioning device – see for example figures 1-4. Stiles does not disclose moving at least one cutting device along a cutting path substantially transverse to the longitudinal axis of the neck and into the neck from one side of the neck towards and opposite side of the neck. Cervin does disclose moving at least one cutting device – of figure 2, along a cutting path substantially transverse to the longitudinal axis of the neck and into the neck from one side of the neck towards and opposite side of the neck – see for example figures 1 and 3. Therefore it would have been obvious to one of ordinary skill in the art to take the method of Stiles and add the cutting device of Cervin, so as to allow for the quickly and humanely slaughter the animal.

Referring to claims 2 and 17, Stiles as modified by Cervin further discloses the cutting device – of figure 2 of Cervin, comprises a substantially elongate blade – at 10-12, having a sharp inclined front side – at 11-12, and a longitudinal axis, wherein the blade is moved along the path substantially in a direction parallel to its longitudinal axis – see figures 1 and 3, the at least one blood vessel which is to be opened located in the path of the inclined side of the blade – see for example figures 1 and 3 of Cervin.

Referring to claims 3 and 18, Stiles as modified by Cervin further discloses the blade – of figure 2 of Cervin, is moved to and fro substantially along a line – see for example figures 1 and 3 and column 4 of Cervin.

Referring to claim 4, Stiles as modified by Cervin further discloses the at least one blood vessel opened comprises at least one jugular vein – see for example column 1 lines 7-15 of Cervin.

Referring to claims 8 and 28, Stiles as modified by Cervin further discloses after the at least one blood vessel has been opened, at least one leg of the slaughter animal engages a carrier – at 37-38 of Cervin and – at 40 or 62 of Stiles, whereby the slaughter animal is at least partially supported by the carrier – see for example figures 1 and 3 of Cervin and figures 2 and 4 of Stiles.

Referring to claim 19, Stiles as modified by Cervin further discloses the neck positioning device – as seen in figures 2 and 4 of Stiles, engages the neck in the area which extends from the underside of the head of the slaughter animal to the second cervical vertebra – see for example figures 1-4 and column 1 lines 52-64 and column 2 lines 60-72 of Stiles.

Referring to claim 63, Stiles as modified by Cervin further discloses the at least one blood vessel is at least one carotid artery – see for example column 1 lines 7-15 of Cervin.

Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stiles as modified by Cervin, as applied to claim 6 above, and further in view of U.S. Patent 6,174,228 to Grimsland et al. Stiles as modified by Cervin discloses the claimed invention except for teaching the slaughter animals are killed via gas prior to slaughter. Grimsland et al. teaches a procedure and equipment thereof, for gradual anesthetizing of poultry to induce a slow and comfortable death so as not to alarm the slaughter animal being killed. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the slaughter methods of Cervin, by anesthetizing the slaughtered animal to death as taught by Grimsland et al., since Grimsland et al. teaches such a modification induces a slow and unalarming death for the slaughter animal.

Claims 20-22 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stiles as modified by Cervin as applied to claims 16 and 19 above, and further in view of U.S. Patent No. 3,967,343 to Westervelt et al.

Referring to claim 20, Stiles as modified by Cervin does not disclose a head carrier for carrying the slaughter animal by its head. Westervelt et al. does disclose a head carrier – at 4-7, for carrying the slaughter animal – at 12 by its head – see for example figures 3 and 5. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Stiles as modified by Cervin and add the head carrier of Westervelt et al., so as to allow for the neck of the animal to be properly positioned prior to cutting.

Referring to claim 21, Stiles as modified by Cervin and Westervelt et al. further discloses the head carrier comprises a substantially U-shaped carrying opening – at 5 or 6, the transverse

dimension of which is smaller than the width of the head of the slaughter animal – see for example figure 3 of Westervelt et al.

Referring to claim 22, Stiles as modified by Cervin and Westervelt et al. further discloses the head carrier forms part of a conveyor having a conveyor path – see figure 5 of Westervelt et al., wherein the conveyor path at least extends from a location where slaughter animals are supplied to the location of the blood vessel opening device – see for example figure 5 of Westervelt et al.

Referring to claim 34 Stiles as modified by Cervin does not disclose the neck-positioning device comprises a head support for supporting the head and a shoulder support for supporting the shoulders of the slaughter animal. Westervelt et al. does disclose the neck positioning device comprises a head support – at 4-7, for supporting the head and a shoulder support – at 1-3 and 10, for supporting the shoulders of the slaughter animal – see for example figure 3. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Stiles as modified by Cervin and add the head and shoulder support of Westervelt et al., so as to allow the neck of the animal to be properly positioned prior to cutting.

Claims 29-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stiles as modified by Cervin as applied to claim 28 above, and further in view of U.S. Patent No. 5,108,345 to Harben et al.

Referring to claim 29, Stiles as modified by Cervin does not disclose the leg positioning device comprises a support which can tilt about an axis for tilting at least part of the at least one leg from a substantially vertical position into a substantially horizontal position. Harben et al. does disclose the leg positioning device – as seen in figure 2a, comprises a support – at



15,32,62,72, which can tilt about an axis for tilting at least part of the at least one leg from a substantially vertical position into a substantially horizontal position – see for example figures 2-10. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Stiles as modified by Cervin and add the leg-positioning device of Harben et al., so as to allow for the animal to be properly positioned for further processing functions.

Referring to claim 30, Stiles as modified by Cervin and Harben et al. further discloses the part of the leg extends below the knee joint – see for example figures 2-10 of Harben et al.

Referring to claim 31, Stiles as modified by Cervin and Harben et al. further discloses the support is adapted to support the breast of the slaughter animal – at item 32 as seen in figures 2-3 of Harben et al.

Referring to claim 32, Stiles as modified by Cervin and Harben et al. further discloses the support is provided with a gripper device – at 61 and 21,24, of Harben et al. – at 40 or 62 of Stiles and – at 37 of Cervin, for securely gripping the at least one leg.

Referring to claim 33, Stiles as modified by Cervin and Harben et al. further discloses one or more stops – at 84,86, which interact with the leg positioning device – at 72, for positioning the at least one leg substantially in a horizontal plane – see for example figures 2-3 of Harben et al.

*Allowable Subject Matter*

4. Claims 9, 11-13, 64, 66 and 69-74 are allowed.

Referring to claim 66, in line 5 “for increasing” should be - -adapted to increase- -.

Claims 23-27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Further, in lines 1-2 of claim 23, "for increasing" should be replaced with - -adapted to increase- -.

### *Response to Arguments*

5. Applicant's arguments with respect to claims 2-4, 6, 8-34 and 63-74 have been considered but are moot in view of the new ground(s) of rejection.

### *Conclusion*

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited to further show the state of the art with respect to animal throat slitting devices in general:

U.S. Pat. No. 1,118,635 to Cassard – shows fowl throat slitting device

U.S. Pat. No. 2,466,489 to Silfen – shows fowl neck cutting device

U.S. Pat. No. 2,952,032 to Breitzkreutz – shows fowl neck cutting device

U.S. Pat. No. 3,563,363 to Harben – shows fowl neck supporting device

U.S. Pat. No. 3,805,328 to Strandine et al. – shows fowl neck cutting device

U.S. Pat. No. 4,011,630 to Ochylski – shows head supporting device

U.S. Pat. No. 4,615,077 to Beebe – shows neck-supporting device

U.S. Pat. No. 4,625,363 to Watson – shows neck-supporting device

U.S. Pat. No. 5,246,396 to Schumann et al. – shows fowl processing method

U.S. Pat. No. 6,015,339 to Lochbrunner et al. – shows neck-supporting device

DT Pat. No. 1177783 – shows head supporting device

JP Pat. No. 59-192036 – shows fowl neck cutting device

FR Pat. No. 2737953 – shows head supporting device

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J Parsley whose telephone number is (703) 306-0552. The examiner can normally be reached on 9hr compressed.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (703) 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Patent Examiner  
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PETER M. POON  
SUPERVISORY PATENT EXAMINER

5/21/04